IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
::::

O R D E R

(1) Agriculture Officer Vs. Presiding Officer & Anr.
(S.B. CIVIL WRIT PETITION NO.4789/2003)

(2) Ganesh Lal Vs. State of Rajasthan & Ors.
(S.B. CIVIL WRIT PETITION NO.1986/2003)

WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 20th November, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

(S.B. CIVIL WRIT PETITION NO.4789/2003)
Mr.Rameshwar Dave, Dy. Govt. Advocate.
Mr.Mahipal Rajpurohit, Advocate for the respondents.

(S.B. CIVIL WRIT PETITION NO.1986/2003)
Mr.Mahipal Rajpurohit, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

The aforesaid two writ petitions arise out of the common

award passed by the learned labour court on 10th September, 2001.

While in writ petition No.4789/2003, the Agricultural Officer, Jal Grahan Vikas and Bhu Sanrakshan Vibhag, Bali (hereinafter referred to as the "Management") has challenged the ex parte award dated 10th September, 2001 and the subsequent order dated 30th October, 2002 whereby its application for setting aside the ex parte award was rejected, the writ petition No.1986/2003 has been filed by the petitioner seeking mandamus directing the management to implement the award. Both the writ petitions were therefore heard together and are being disposed of by this common judgment.

The appropriate Government vide notification dated 03rd December, 1998 referred an industrial dispute to the learned Labour Court, Jodhpur for adjudication on the question whether removal of the respondent-workman by the management from 31st October, 1993 was legal and justified and if not what relief he was entitled to. The respondent

workman submitted his claim before the labour court asserting therein that he had worked with the management for more than 240 days on daily wage basis. He was appointed on 01st June, 1992 and worked with them up to 30th October, 1993. He was removed from service on 31st October, 1993. The management however did not make compliance of Section 25-F of the Industrial Dispute Act, 1947 prior to his removal neither did they give notice nor notice pay nor even compensation at the time of his removal. Apart from non-compliance of Section 25-F, the workman also asserted that the management has not even complied with Section 25-G and H of the said Act. It was therefore prayed that his retrenchment be declared illegal and he be held entitled to reinstatement with full back wages.

One Prahalad Singh appeared on behalf of the management before the labour court on 19th March, 2001. Copy of the statement of claim was furnished to him and the matter was deferred to 09th May, 2001 on which date one Hari Singh, Assistant Agricultural Officer appeared for the

management and requested for time to file reply. The matter was then fixed on 23rd June, 2001 on which date no one appeared on behalf of the management. It was therefore directed that ex parte proceedings were ordered to proceed against the management. The workman filed his own affidavit in support of his claim and since there was no affidavit in rebuttal and no contrary evidence was adduced, the learned labour court recorded the finding of non-compliance of Section 25-F and accepted the case of the workman as proved and declared his retrenchment as illegal directing his reinstatement in service with 50% back wages.

The case of the management is that they came to know about the ex parte award only when the respondent-workman produced its copy in their office in the first week of November, 2001. Immediately thereafter they moved an application for setting aside the ex parte award. The application was based on the ground that Hari Singh who lastly appeared before the labour court on 23rd June, 2001 as officer in-charge was transferred. While he was relieved, he did not hand over the

charge to any other officer, thus, the next date of the case could not be known by the remaining officers because no one else was posted in place Hari Singh for about three months from 23rd June, 2001 to 10th September, 2001. In these circumstances, the matter before the learned labour court went unattended and ex party award was passed. The learned labour court however rejected the application on 30th October, 2002. However, when compliance of the award was not made by the management for quite some time, the workman also filed a writ petition seeking writ of mandamus against the management seeking a direction to them to implement the award.

I have heard learned counsel for the parties and perused the record.

Shri Rameshwar Dave, learned Dy. Govt. Advocate while referring to para 4 of the writ petition argued that the categorical case to the management before the Conciliation Officer was that the respondent workman was elected as

Chairman of the Users Committee which was responsible for technical supervision of the project work of DDP. The Government or any of its department specially Irrigation Department, did not have either any control or any role in the appointment of the workman. Since he was elected as Chairman of the Users Committee, he was in-charge of the Project Work of DDP. The money for the work was directly remitted to the account of Users Committee which was an agency of DDP. There was therefore no relationship of master and servant between the management or the respondent-workman. Even otherwise, the management had categorically clarified before the Conciliation Officer that the workman had completed only 120 days for the period from 01st June, 1992 to 30th November, 1992 with the Users Committee and thus did not complete 240 days. The learned Dy. Govt. Advocate argued that the proceedings of the learned labour court were attended by one Prahalad Singh lastly on 09th May, 2001 and he was thereafter transferred. On 23rd June, 2001 when the matter was fixed, he already stood relieved. He did not hand over the charge of his office to any one. In these circumstances, when

the matter was listed again on the next date on 05th July, 2001, it was not attended by any one on behalf of the management. Neither did Hari Singh himself attended the proceedings on 23rd June, 2001 nor did he inform any one about the date of the case. Absence of the management or its representative before the learned labour court was not deliberate and it was for a bona fide reason. But the learned labour court rejected the application for setting aside ex parte award not only on the ground of delay but also on the ground that it has not been specifically disclosed on which date Hari Singh was transferred and if transferred why another officer did not appear before the court and this was a case of gross negligence. He has argued that the learned labour court ought not to have rejected the application as being time barred. It should have considered the matter on merits particularly when the management had proved a prima facie case on merits. There were two basic grounds on which the management wanted to lead evidence to disprove the case of the workman that the workman was never an employee of the management, but he himself was Chairman of the Users Committee which was

responsible for the project work and secondly that even if it was accepted that he was an employee of the said Users Committee, he none the less did not complete 240 and only worked for 120 days.

On the other hand, Shri Mahipal Rajpurohit, learned counsel for the respondents argued that the department has been grossly negligent in not contesting the matter before the learned labour court and that the workman had proved by his evidence that he worked for more than 240 days in the calender year immediately preceding the date of his retrenchment. Learned counsel referred to Annexure-R/2 filed with their reply in which the Deputy Director of the department concerned has given a certificate wherein the workman has been shown to have completed 279 days in the service of the management during the period from December, 1992 to October, 1993. He also argued that according to the aforesaid certificate, the workman had lastly worked with the management up to 31st October, 1993 whereas he was elected as Chairman of the Users Committee on 20th November, 1993.

It could not therefore be said that he was not employee of the management but was Chairman of the Users Committee because his working period was prior to his election as Chairman. Learned counsel further argued that the management has failed to give any explanation whatsoever as to why they did not file application for setting aside ex parte award in time and have also not given any sufficient or convincing reason why should the award be set aside. It is therefore argued that the writ petition filed by the management be dismissed.

I have considered the arguments advanced by learned counsel for the parties and perused the record.

It is a common knowledge that the officers in the Government when they proceed on transfer have to hand over the charge of the office to the any Government officer and in the present case, the management had plain and simple prayed for setting aside the ex parte award stating the reason of the transfer of the officer in charge Hari Singh and

submitted that it was he who as an officer in charge of the case lastly appeared before the learned labour court on 19th March, 2001 but by the time next date arrived on 09th May, 2001 he had already been transferred and in the circumstances no one could appear on behalf of the management. Again the matter was not attended by any one on their behalf when it was taken up on 23rd June, 2001. The learned labour court has rejected the application holding that there were two parties to the aforesaid reference case namely Agricultural Officer, Assistant Engineer and even if Hari Singh was not present, it was necessary for the officer on any of these two posts to appear before the court and moreover the management has not disclosed as to on which date the said Hari Singh was transferred and if he was transferred was there not any other officer on his post for this period of three months from 23rd June 2001 to 10th September, 2001. The learned labour court therefore held that not only there was no sufficient reason for non-appearance of the management but there was no explanation for the delayed filing of the application. It was by citing these reasons that delay in filing the application for

setting aside ex parte award was not condoned and consequentially application for setting aside ex parte award was also rejected. In doing so, the learned labour court however has taken note of the fact that the management in its application has stated that the appointment of the workman was made through Users committee.

In my considered view, the learned labour court at the stage of set aside ex parte award and condonation of delay in filing the application therefor was merely required to see whether the management has been able to give reasonable explanation for the delay in filing the application which is what is known as sufficient cause. Merely because the date of transfer of Hari Singh was not disclosed, this did not detract from the fact that he had in fact been transferred and the factum with regard to his transfer was not even disputed by the workman. It is a common knowledge that peculiarity about working of the government is that when an officer is transferred, the incoming officer has to take charge on his responsibilities and the other officers may not be as much

concerned with such responsibilities as such incoming officer. If the officer in charge was transferred and his reliever was not posted, the learned labour court cannot refuse to accept this explanation by observing that he was not party to the claim and those who were party to the claim case namely Agricultural Officer and Assistant Engineer were not transferred therefore any of them should have appeared to contest the matter. In asserting that the appointment of the workman was not made directly by the department but was through Users Committee, the management was at lease able to prima facie show to the court that it has a plausible case to prove if an opportunity was given to them. Management at least made out a case worth examination on merits. In my considered view, it is always better to secure finding of question of fact on merits when much depend on such finding being recorded on a question of fact. Learned labour court has thus clearly committed an error of law in not condoning the delay in filing the application for setting aside the ex parte award. I am satisfied that the management has been able to make out a case on both the counts and therefore their writ petition deserves to be allowed.

But the writ petition filed by the workman for implementation of the award dated 10th September, 2001 is liable to be rejected.

In the result, the writ petition No.4789/2003 is allowed and resultantly the application of the petitioner for setting aside ex parte award is allowed. Matter is remanded back to the labour court for deciding it afresh after opportunity to the parties to adduce evidence. The writ petition filed by the workman No.1986/2003 is dismissed. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-